**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.**

**ORDER**

Meera Park Vikash Samiti Vs. Rajasthan Housing Board and anr.

S.B. Civil Writ Petition No.1224/2002 under Article 226 of the Constitution of India.

Date of Order: July 08,2005.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Sangeet Lodha)
Mr. Anil Bhandari), for the petitioner.

Mr. B.D. Purohit, for the respondents.

BY THE COURT:

The present writ petition has been filed by the allottees of the houses from the Rajasthan Housing Board in a self-financing scheme known as Parijat Yojna. The scheme was announced in the year 1988. The structures of the houses were constructed by the Rajasthan Housing Board and houses were allotted to the allottees in the year 1992. As per the petitioner-society, the Rajasthan Housing Board was under legal obligation as per the terms and conditions of the Parijat housing Scheme, which according to the petitioner-society, is a non-statutory contract but

binding upon both the parties and, therefore, the allottees are entitled to all the benefits in terms of the agreement between the allottees and Rajasthan Housing Board. The present writ petition has been filed by 17 allottees by forming a society named Meera Park Vikas Samiti, when Rajasthan Housing Board issued the demand notices to the allottees in the year 2001. Copy of the one of the demand notice dated 26.3.2001 has been placed on record by the petitioner-society as Annx.12. The members of the petitioner-society are aggrieved against the said demand notices.

2. It will be relevant to mention here that the allottees of the houses from the Rajasthan Housing Board had grievances earlier also, therefore, they preferred writ petition before this Court. The facts leading to the filing of the earlier writ petition are that according to the petitioners, Rajasthan Housing Board should have given possession of the home skeleton within a period of one year but they failed to deliver the possession of the home skeleton despite the fact that entire due amount (50% of the total amount) was deposited by the allottees. According to the petitioner-society even houses were not constructed by the Rajasthan Housing Board, what to say of delivery of possession of the houses to the allottees. Ultimately, houses were allotted periodically to the allottees in the year 1991. It

appears from the averment made in the petition that the Rajasthan Housing Board allotted the houses in different batches to the allottees and demanded the different amount from the allottees which were Rs.1,60,354/-, Rs.2,14,126/- and 2,40,544/- from the allottees of first and second batch and from third and fourth batch. This classification made by the Rajasthan Housing Board was one of the cause of grievance of the allottees and they preferred writ petition before this Court and raised several issues which are not very much relevant at this stage, however, during pendency of the earlier writ petition, the matter was considered by the Rajasthan Housing Board and some relief was granted to the allottees in construction cost. The Rajasthan Housing Board further reduced the lease money from 3% to 2.5% per annum and issued reduced demand notices to the allottees for payment. It is said that in the reduced demand notices, only construction cost was reduced but the lease money was demanded @ 3%. The writ petition of the various petitioners was decided by the learned Single Judge of this Court vide order dated 16.11.1992 wherein it has been held that the respondent-Rajasthan Housing Board cannot demand increased land cost from the allottees and the lease money can be 2.5% and not 3%. No relief was given to the allottees so far as it was relating to the construction cost of the structure is concerned. The Rajasthan Housing Board as well as

the allottees preferred appeals against the judgment of the learned Single Judge dated 16.11.1992. The Rajasthan Housing Board prayed that price of the land should not have been reduced whereas the allottees demanded that they should have been given benefit in the construction cost also. An interim order was passed by the Division Bench staying the order of the learned Single Judge on the condition that the allottees will give an undertaking before the Deputy Registrar(Judl.) of the Rajasthan High Court that in case the appeal will succeed the allottees will make the payment of balance amount, i.e., difference of price/premium in respect of the land and on filing such undertaking, the Rajasthan Housing Board shall give possession of the skeleton houses to the allottees. The allottees submitted undertaking and the Rajasthan Housing Board handed over possession of the skeleton houses to the allottees. In the year 1993, again demand notices were issued to the allottees, copies of some of the notices were placed on record as Annx.7 and 7A. The Special appeal preferred by the Rajasthan Housing Board as well as the allottees were dismissed by the Division Bench vide order dated 8.8.1995, however, while dismissing the writ petition, the Division Bench issued directions that the allottees may make payment of the balance amount within a period of one month from the date of judgment, i.e. 8.8.1995. Therefore, according to the

petitioners, the date for payment has been extended upto 10.9.1995.

3. Aggrieved by the judgment of the Division Bench, the allottees preferred special leave to appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court on 9.10.1995, stayed the payment of difference amount in price of the land but subsequently directed the allottees to pay 50% of the difference of the price of the land within one month and according to the allottees, the said amount was deposited by them. Ultimately, Hon'ble the Supreme Court dismissed the allottees' special appeals on 20.3.1997. In these facts, according to the allottees, the allottees were required to pay the remaining 50% of the difference of land price and all the allottees deposited the same within the period of one month from the date of judgment of the Hon'ble Supreme Court, therefore, all amounts stand deposited by or before 19.4.1997 by the allottees. The allottees demanded No Due Certificate for the houses from the Rajasthan Housing Board but according to the petitioner-society, the Rajasthan Housing Board raised various demands which according to the petitioner-society were not sustainable in law, therefore, the allottees submitted representation to the Chairman,Rajasthan Housing Board which is dated 24.1.2001, copy of which is placed on record as Annx.11. It is submitted by the petitioner-society in

the writ petition that when the allottees demanded No Due Certificate, then the respondent issued fresh demand notice dated 26.3.2001 and copy of which is placed on record as Annx.12, which is impugned in this writ petition.

4. It is submitted that the Rajasthan Housing Board demanded Rs.2144/- as amount for cost of the land, Rs.38991/- as interest and lease money amounting to Rs.17464/- and interest on lease money Rs.13920/-. It is also submitted that the members of the petitioner-society deposited the amount as per the directions of the court and if they did not deposit the amount, as claimed by the Rajasthan Housing Board then that was because of the stay order granted by the Court. According to the petitioner when stay is in operation then for the period of stay, no amount of interest can be claimed but the respondents are demanding the interest. The petitioner-society thereafter submitted that they met the Chairman of the Rajasthan Housing Board after submitting the representation but no relief was granted. It is also submitted that on 2.2.2002, a notice was issued by respondent-Rajasthan Housing Board declaring certain relief in interest but that relief has not been granted to the members of the petitioner-society. When the members of the petitioner-society were not given any relief, they preferred the present writ petition and challenged the

demand notice dated 26.3.2001 and submitted various documents before this Court in this writ petition.

5. The respondents submitted preliminary objection against the maintainability of the writ petition. According to the respondents, the Rajasthan Housing Board, the controversy raised in the present writ petition has already been decided by this Court; by the learned Single Judge, by the Division Bench and thereafter by Hon'ble the Supreme Court. According to the respondents, the issue regarding realisation of interest was closely scrutinized by the Division Bench of this Court as well as by the Hon'ble Apex Court in which the members of the petitioner-society were parties. It is also submitted that in view of the judgment of the Hon'ble Supreme Court, the writ petition to enforce the contractual matter is not maintainable and the petitioner-society, by this writ petition, wants to enforce the contract by submitting that as per the terms of the contract, they are not liable for the payment whereas according to the Rajasthan Housing Board, the allottees are liable for the payment as demanded by the Rajasthan Housing Board. It was also submitted by the learned counsel for the Rajasthan Housing Board that the Division Bench of this Court in the earlier round of litigation very clearly held that the writ petitions filed by the petitioners were neither maintainable nor competent

and further held that the writ petitions involve highly disputed questions of facts and accounting are also involved in the matter which could not have been permitted to be raised in extra-ordinary writ jurisdiction of this Court. The Division Bench also held that since it was pure and simple a non-statutory contract, the parties to the lis are governed by the terms and conditions laid down in the scheme. The same could not form a subject matter for interference under Article 226 of the Constitution of India. Therefore, according to the learned counsel for the respondents, the present writ petition also deserves to be dismissed following the Division Bench judgment.

6. The petitioner-society submitted a detailed rejoinder and thereafter the Rajasthan Housing Board submitted reply and submitted several documents.

7. The matter was taken up by this Court for consideration on 17.3.2005. The learned counsel for the Rajasthan Housing Board, after raising preliminary objection, submitted that as far as error in calculation is concerned, the Rajasthan Housing Board is ready to make correction. The Board will not demand the amount for which the allottees are not liable. Upon this, learned counsel for the petitioner submitted that Hon'ble the Supreme Court reduced the rate of interest in identical circumstances that too

in the matter of contract and, therefore, this Court may exercise its discretion and reduce the rate of interest looking to the totality of the facts. After taking note of the rival submissions, this Court ordered that it will be just and proper to direct the members of the petitioner-society to deposit the demand raised against them by the Rajasthan Housing Board so far as the principal amount is concerned. The members of the petitioner-society shall deposit the interest @ 9% per annum in place of any higher rate which has been levied by the Board. This amount of interest @ 9% per annum is only provisional and members of the petitioner-society themselves shall calculate the interest amount and first to deposit the due amount along with interest @ 9% per annum and simultaneously, the Board may also calculate the interest @ 9% per annum. The members of the petitioner-society were directed to deposit the said amount on or before 31.3.2005. This Court in the above order dated 17.3.2005 made it very clear that in case any of the members of the petitioner-society will not deposit the amount as referred above, the writ petition of the petitioner being for the benefit of all has been filed, may be dismissed only on the ground of involvement of disputed questions of facts which will be clear because of the dispute raised by the members of the petitioner-society.

8. The above order was complied with by the members of the petitioner-society and certain amounts were deposited by the members of petitioner-society but the controversy remained surviving. Vide order dated 17.3.2005, the members of the petitioner-society were given permission to submit representation before the Deputy Housing Commissioner and the Deputy Housing Commissioner was directed to examine the representation of the petitioner and pass brief reasoned order. However, the representation of the members of the petitioner-society was rejected by the Deputy Commissioner vide order dated 16.4.2005 but since that was not a reasoned order, therefore, the Board was again directed to consider and decide the matter afresh vide order of this Court dated 19.5.2005. The dispute still has not been settled between the parties. Therefore, the writ petition of the petitioner-society was heard on merit by this Court.

9. The thrust of argument of the learned counsel for the petitioner-society is that the interest cannot be charged for the period for which the stay orders were passed by the court for the payment of the amount to the Rajasthan Housing Board. For that purpose, the learned counsel for the petitioner relied upon the judgment of this Court delivered in the case of Director,Central State Farm Sardargarh vs. The State

of Rajasthan & ors ( S.B.Civil Writ Petition No. 1680/1994) decided on 9.1.2003( by me) wherein it was held by this Court that no interest shall be payable to respondent no.3 because of the reason that this Court entertained the writ petition and stayed the operation of the award with respect to the back wages on 8.4.2004 and, therefore, the petitioner cannot be saddled with this amount of interest. The learned counsel for the petitioner further relied upon the judgment of the Delhi High Court delivered in the case of M/s. Mascot Enterprises Wholesale Wine Merchants and others v. Lt. Governor of Delhi and others ( AIR 1981 Delhi 92) wherein the Division Bench of the Delhi High Court, on finding that part of the excise duty was stayed by the High Court's order but the petition was ultimately withdrawn and stay order was vacated in view of the Ordinance issued by the President of India, therefore, held that interest on said amount could not be recovered for the period the stay order was operative. The same view was taken by the Division Bench of the Allahabad High Court in the case of Smt. Vrindra Gujarati and others v. Bareilly Development Authority and others (AIR 1997 All. 107) in a matter relating to the allotment of houses by Development authority on the ground that principal amount remains disputed till the stay order is vacated or the petition is finally decided.

10. The learned counsel for the petitioner submitted that this is a fit case for reducing the interest rate as has been done by the Hon'ble Apex Court in the cases reported in Bareilly Development Authority v. Vrinda Gujarati (JT 2004 (3) SC 83), Indore Development Authority vs. Sadhana Agarwal (Smt) and others ( (1995) 3 SCC 1) and DDA and others vs. Joginder S. Monga and others ( (2004) 2 SCC 297). It is also submitted that the writ petition in such matters is maintainable as held by the Hon'ble Supreme Court in the case of Ratanlal Vachhani v. The Jabalpur Development Authority & anr. ( JT 2002(3) SC 570) and Kanpur Development Authority vs. Sheela Devi & ors. Etc. (I (2004) CPJ 12 (SC) Consumer Protection Judgments). The written arguments have been submitted by the respondents which were also considered.

11. It is clear from the facts mentioned above that the petitioner-society is seeking relief on the basis of the terms and conditions as contained in the contract under which the houses were allotted to the members of the petitioner-society by the Rajasthan Housing Board. The controversy relating to the dues of the allottees was the subject matter in earlier round of litigation and which was ultimately decided by the Hon'ble Apex Court. The Division Bench of this Court in earlier litigation held that in contractual matter where disputed questions of facts are involved and

detailed accounting is required then writ petition is not the proper remedy. In this case, this Court gave opportunities to the parties to look into the accounts and they could not settle the matter. The petitioner-society submitted detailed representation with details of the accounts and the respondents have entries in the account books. The payment which the members of the petitioner-society are saying have not been credited by the respondent-Rajasthan Housing Board, is required to be examined by the account books only. It will be necessary to look into whether the amount was deposited on any particular date so as to find out the payment to be within period of limitation. Thereafter, the interest is required to be calculated if the allottees have not paid the amount in time. Assuming for the sake of argument that all or some of the allottees deposited the due amount in time then the interest is required to be deducted from the demand raised against the allottees. There may be several other aspects of the matter and those cannot be decided by this Court in writ jurisdiction. This Court cannot presume that the Rajasthan Housing Board, who has no personal interest, will after giving assurance before this Court that if there is a mistake in accounting, they will correct, will not correct the account and raised illegal demands against the allottees. There may be mistake on the part of the Board but that mistake can be corrected only when full

opportunity is given to the Rajasthan Housing Board also to show that their accounts are correct. Therefore, the writ petition of the petitioner so far this relief is concerned deserves to be dismissed only on the ground of involvement of disputed questions of facts.

12. Another plea of the learned counsel for the petitioner is that the rate of interest can be reduced by this Court and the members of the petitioner-society cannot be asked to pay the interest amount when the recovery was stayed by this Court. It is true that this Court (by me) in the case of Director, Central State Farm Sardargarh(supra) granted relief to the petitioner for interest on the ground that the stay order was granted by this Court with respect to the back wages and, therefore, now the petitioner cannot be saddled with the interest amount. It is clear from the above judgment that on facts this Court disallowed the interest to the employee in the case of claim of back wages. That judgment nowhere lays down that in case where there is stay against recovery of money decree order or claim then for the period of stay, the party against whom the court passed order staying recovery, shall not be entitled to interest.

13. In the present case, the Court granted the interim stay obviously because the allottees satisfied the

Court that there is ground for stay against the payment. The Court may stay recovery of money on the basis of the facts of particular case, even in money matters. There may be different species of the dispute and it cannot be laid down as a law that whenever Court will pass order staying the recovery of any amount and if that stay order is vacated or the petition is dismissed, the other party shall not be entitled to demand the interest of amount for the period of stay. Such relief of non-payment of interest for stay period should have been sought at the time when the stay order was vacated or the stay order stands vacated because of the final order passed in the petition. It is not proper to make consequential relief, an issue in subsequent litigation or a foundation for second round of litigation. Normally, if while vacating the stay order or dismissing the writ petition, relief about interest for intervening period is not granted then the parties who obtained the stay order, is liable to pay the interest as per law or contract because of the simple reason that he is relegated the position when there was no stay against recovery. Further it was also not the fault of the respondents as the court granted the stay order ex parte or even after hearing both the parties. The amount becomes due as per the terms of the contract or on accrual of liability of one party. The interim order of stay of recovery of the due amount is neither

an order disproving the liability nor it can be said to be an order of deferring the liability. It may be said that the liability remains disputed but mere dispute is no ground to make the liability effective from the date when the stay order is vacated by the Court. Therefore, I do not find any substance in the argument of the learned counsel for the petitioner that simply because there were stay orders in favour of the allottees, therefore, they, as a matter of right, are not liable to pay interest for that period to the Rajasthan Housing Board for the due amount.

14. It is true that in some cases, compelling equities may demand some relief and the High Court while exercising power under Article 226 of the Constitution of India, may grant that relief which is permissible under law and that include reduction in interest rate depending upon facts of cases.. The Hon'ble Apex Court has wider power. It will be worthwhile to mention here that there are only 17 persons who are the members of the petitioner-society. It is not the case of the petitioners that they are the only members who are the allottees under the Parijat Yojna. Therefore, the persons other than the members of the petitioner-society might not have been given the benefit of reduction of the interest by the Rajasthan Housing Board and there is no reason for separating these members of the petitioner-society from the others. The

petitioners who were under obligation to pay all amounts in time, raised dispute and ultimately the Court has decided the issue against the members of the petitioner-society, they have no right to claim the reduction of the interest rate (that too only for 17 out of several).

15. In view of the above discussion, the writ petition of the petitioner-society is dismissed. However, it is made clear that the members of petitioner-society after depositing the amount demanded by the Rajasthan Housing Board may approach any forum including civil court for recovery of the amount which according to the petitioner, has been recovered from the allottees illegally.

( PRAKASH TATIA ),J.

mlt.